

Questions and Answers/December 5, 2007, Webstream/Webinar

1. For a secondary student: If the general education teacher that was listed on the notification of meeting is unable to attend, can a different general education teacher attend the meeting?

Answer: Yes. You will want to list invitees on the notification by role.

2. Please explain what 1400.50f under SLD criteria means.

Answer: This wording comes directly from the federal and state regulations under IDEA 300.309 (b) (2) and relates to just one of the things the eligibility determination team needs to consider when making the eligibility determination. The regulations state that the group must consider "data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents." We are asking that districts ensure that before concluding a student is a student with a specific learning disability, the parents have been made aware through assessments at reasonable intervals of their child's performance in the general education environment and that data has been used to track the child's progress and to influence instruction. As noted in the comments to the federal regulations, instructional models vary in terms of the frequency and number of repeated assessments that are required to determine a child's progress. Therefore, the frequency of those intervals should be determined on an individual basis.

Please refer to the answer given to question # 49 from the October 3, 2007 Webinar for additional information regarding the documentation expected for this indicator.

3. Example of change in IEP: Because of normal change in grade level from year to year, changing state and district assessments that the child will take. Will this require notice of action?

Answer: Yes, a notice of action is required for IEP changes that relate to MAP participation. As in the case of other IEP changes, this relates to provision of FAPE.

4. If a parent is participating in the annual IEP meeting and it is determined by the team that a classroom accommodation should be changed, would that trigger a notice of action or are you saying that once the IEP has been finalized, any changes would trigger a notice?

Answer: Yes, change in accommodation on the IEP will trigger written notice.

5. If a parent is not present after 2 notices for an IEP meeting to sign the 10 day section and we are obligated to get the IEP out within 20 days, do the new minutes take effect 10 days after the meeting or 10 days after the parent receives the IEP?

Answer: Not sure where the 20 day timeline you are referring to comes from. You can not implement a change that requires written notice, until the parent either waives the 10 days notice or until day 11; there are exceptions, but this would not be one of them. One obvious exception is in the discipline area - sometimes there isn't 10 days available.

6. A student transfers from out of state into a school district within the state. That district does not get to do any paperwork before the student comes into the next district. Will that district treat as out of state or in state?

Answer: Assuming that the change from one Missouri school district to another happened extremely fast and immediately after the move into Missouri from out of state (which did not allow time for receipt of any paperwork), I think we would expect you to treat this child as an out of state student.

7. So, do we not need to have a signature for initial placement? Do we get signature for initial services only?

Answer: Correct, it appears that in recent changes to IDEA and its regulations that the concept of initial placement has been replaced by initial services.

8. Will initial placement category be removed from the NOA? Currently, it is still on there.

Answer: Initial placement remains on the Notice of Action form because that is still a reason for providing the required Notice of Action. It is not noted on page 2 of the state model form as a time when signed consent is required, however. Initial placement requires notice but not consent. Keep in mind, the purpose of the written notice is to explain to the parent what you are doing and why and to inform them of their rights to contest the decision. It is less important to correctly "categorize" your decision. So, calling it initial placement instead of initial services will not result in any compliance problems. Initial services require consent; initial placement does not.

9. With the need to provide written notice of any changes in the IEP, should we send one with the Meeting Notification so that the changes in the present level, goals, considerations such as district/state testing can be implemented following the meeting and then send a written notice following the meeting for things such as change in service/placement, related services, and/or classroom modifications?

Answer: No, you can not send written notice of changes until and unless the IEP team has first met to decide upon them.

10. Will the Change of Placement notice suffice for the Notice of Action you are describing which is necessary anytime an IEP is changed?

Answer: Yes, the written notice of change of placement, while not correctly categorizing the change, will include the required components of the change. As long as the required components of a notice are included in the notice, it does not matter what you call it. But it can be confusing to the parent and may cause you unnecessary friction with the parent, especially if they are concerned you may be considering a change in placement that they do not want.

11. Are you implementing the IEP timely if you are waiting 10 days from the date of notice if the IEP date and Notice of Action are dated the same date?

Answer: Yes, since the changes require written PRIOR notice and the law does not permit you to implement those changes until you give the parents a reasonable time to react to the proposals.

12. When a second grade student is going to third grade with the annual IEP staying current into third grade, is it okay to indicate on the current IEP the standardized testing being administered is designated by second grade placement and then third grade placement? Ex: Indicate on IEP as a second grader Stanford 10, third grader MAP.

Answer: Yes, as long as anyone reading the IEP will understand which assessments will be used at which time, I think this would be fine.

13. Do IEP amendments require a notice of action?

Answer: Yes, if the amendment results in a change proposed that involves evaluation, placement, identification, or the provision of a free appropriate public education.

14. What type of notice of action are you describing when you say one is needed after any IEP containing any changes?

Answer: Written prior notice is triggered anytime you propose or refuse to initiate or change the evaluation, identification, placement, or provision of FAPE. The "type" of notice - meaning what you entitle it or name it in terms of category, is less important than the content of the notice which must include the required components of a notice.

15. Are the parents signing all of these prior written notices or are we just informing them?

Answer: There is no requirement for parent signature on a prior written notice.

16. Could you provide written notice stating the present level, goals, etc. will be revised to reflect progress or lack of....and state the changes more generally?

Answer: You can state changes in more general terms as long as what you include will give a reasonable person notice of what you are doing.

17. It would seem that the parent would be 'notified' of the changes in the IEP when they receive the copy of the new IEP. I am having difficulty understanding why it would be required to provide a notice of action for all IEP meetings.

Answer: The term "Notice" is a legal term that is distinguished from notification under IDEA. IDEA requires written PRIOR NOTICE before you propose or refuse to initiate or change anything related to evaluation, identification, placement, or the provision of FAPE (e.g. services). You do not have to provide written notice for ALL IEP meetings; only those that result in what trigger written notices. It is true that most IEP meetings will result in a written notice.

18. Regarding Transition (Form C), when students do not need assistance with independent living, is any text regarding this needed or is it adequate to just fill in not applicable.

Answer: The IEP team needs to carefully consider whether or not the student has any post-secondary goals and needs services in the area of independent living, which includes skills and knowledge an individual needs to direct his or her life at home and in the community. The issue is whether the student has the skills he/she will need to live independently. We have posted an independent living worksheet to assist teams in determining if independent living goals are needed. The IEP may be marked "N/A" for post-secondary goals in independent living, but it is good practice to be more specific and indicate that the team determined that no post-secondary goal is needed in the area of independent living. This may help the parent and team members to be more conscious of the fact that this is an area that needs to be considered during the meeting before saying it is N/A.

19. It sounds like all of the entire revisions of the new IEP, as determined at the IEP meeting, needs to be noted on the written notice.

Answer: See answers above on this topic.

20. Example of change in Present Level, but no other changes in IEP: A district or parent requested reevaluation has been completed triggering a new IEP that includes this new information. No other changes to the IEP might not need to be made. Would this require notice of action?

Answer: Yes.

21. I am glad that you have addressed this issue of notice of action for goals (and testing changes) because I have had no fewer than three DESE compliance persons tell me that you do NOT have to write a notice of action for goal changes because that is the point of the annual IEP - to revise goals.

Answer: If you were told this by DESE supervisors, we apologize. This is a topic that has been clarified for all Compliance Supervisors. Decisions about present levels of academic achievement and functional performance, annual goals, etc. should be the basis for determinations about necessary services, and thus they relate to provision of FAPE. All IEP changes involving FAPE require a NOA. The NOA alerts parents to their right to due process if they are in disagreement with the IEP decisions made by the district.

22. I guess I am not clear on the written notice, are we talking about changes at the annual IEP meeting or at other times before the annual IEP meeting?

Answer: We are talking about written notice triggered by decisions made by the IEP team as described in answers above.

23. Clarification - is a notice required for changes in map grade level or grade level assessments?

Answer: See answer to question #3.

24. Since an IEP runs for one year, wouldn't it be accurate that at the annual IEP meeting this would be considered a new IEP and would REPLACE the previous IEP, thus eliminating the need for a notice of action because it would not be a change, but a new IEP - No Notice of Action would be necessary.

Answer: This is a distinction you are making that does not exist in IDEA. The IEP developed at the annual meeting is considered a revision of the prior IEP. It is not a "new" IEP in the way you describe which would make it tantamount to an initial IEP.

25. I am a new director. Last year a student was removed from services even though he has ADD with a full scale IQ of 71. The parent wants the student placed back in special education. How do I handle it?

Answer: Students should not be exited from special education unless a reevaluation indicates they are no longer a child with a disability under IDEA. If that is what happened and the parent now has second thoughts about whether she thinks he is still disabled, you should conduct a reevaluation and determine if he meets eligibility criteria for identification.

26. Does that mean that the notice needs to identify specifically each goal that is changed?

Answer: The notice can inform of this in general terms.

27. So basically this means that we must provide a notice of action for every IEP meeting. I have never understood that to be the case before. Is this something new?

Answer: The written notice requirements of IDEA have been in place since 1975 and read almost exactly the same. However, it is true that until the early 1990's, Missouri did not require written notice for change in FAPE; we were cited by the OSEP at that time and since then have implemented this requirement in accordance with the law. There are some IEP meetings that will not require written notice. See answers above for further explanation.

28. Are the procedural safeguards given for a change of placement based on a discipline problem or on any change of placement?

Answer: The actual document is required by disciplinary changes of placement. See state plan and standards/indicators for list of when the actual notice must be given out.

29. So, to be sure I understand: student's previous goal was to improve reading level to 2.5 grade level based on xyz and the IEP team revises the IEP and makes a new goal to increase reading level to 3.2 - this would require a notice of action? Can you give an example of how such would be worded?

Answer: Yes, this type of change would require written notice. Word in a way that puts the parent on notice about the change and make sure you explain it by including the required components of a written notice.

30. Can the written notice include all of the changes or do you need a separate notice for each change?

Answer: There does not need to be a separate notice for each change. You can do one for all or you may want to do one notice per category (this may be easier to write).

31. Can ADHD still be put under OHI?

Answer: Yes, assuming the eligibility criteria for the OHI category has been met.

32. A student has had an initial evaluation/diagnosis and then the team determines at a later date that there are other areas of concern that may warrant an additional diagnosis. Would this be an initial or a reevaluation?

Answer: Reevaluation.

33. If any changes trigger a written notice, can we just indicate the team reviewed and revised?

Answer: While the notice can be general, it would be too general to just say the IEP was reviewed and revised, without identifying the revisions.

34. So, do we get signature for a change in placement when there was no signature for initial?

Answer: Changes in placement do not require signatures.

35. When using the discrepancy model, the new standards and indicators manual does not indicate that the "full-scale IQ score" be used nor does it mention "grade level norms" for academic achievement assessments. Are districts allowed to use the General Ability Index (GAI) on the WISC-IV and age level norms on achievement assessments?

Answer: This will be answered in the January 4 webinar.

36. When a disabled student is long-term suspended for an offense unrelated to the disability and the IEP team determines that he/she needs services and the district provides those services in a homebound setting; can the district code the student in attendance for ADA purposes?

Answer: A student receiving homebound can be counted for ADA purposes if the student is receiving at least 5 hours of instruction per week. Please remember that the amount of hours received is an IEP team decision, that the amount must equal FAPE, and that in general five hours a week is not considered FAPE.

37. Can a child with an IEP be denied school attendance if the parents do not provide immunization/medical records as required for licensing?

Answer: Yes, lack of immunization documentation is one of the few reasons allowed under the law for denying enrollment or services.

38. Is it true that funding is no longer contingent on the student count? How will funding be determined as we move toward RtI?

Answer: There is no longer the separate special education funding we used to refer to as Exceptional Pupil Aid. The special education funding was rolled into the new Foundation Formula that funds all kids. There still is a small separate federal funding that is somewhat based on your population. If you want more information about that part of your funding, contact Dale Carlson in our office. Funding does not affect use of RtI at all.